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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-80-190
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates – Other Types of Care
<b>Action title</b>	Physician Fee Increases
<b>Document preparation date</b>	NEEDS TO BE SUBMITTED TO GOV BY NOVEMBER 11, 2005

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii) as discussed below.

The Items 326 VVV, WWW, and XXX of the 2005 Appropriation Act directed various physician rate increases for an effective date of May 1, 2006. This regulation is intended to satisfy these mandates.

**Please note: 12 VAC 30-80-190 is currently the subject of a separate, Final Exempt regulatory action that concerns increases to certain emergency room services. Changes to the structure of 12 VAC 30-80-190 are being made in this emergency action that do not appear in the structure of 12 VAC 30-80-190 in the separate, Final Exempt regulatory action. These structural differences will be harmonized in the final regulations promulgated subsequent to this current emergency action.**

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This regulatory action is intended to implement the mandated physician rate increases included in the 2005 Appropriation Act. Items 326 VVV, WWW, and XXX directed various physician rate increases for an effective date of May 1, 2006. Specifically, the Act mandated a 2.5% increase for Obstetrical and Gynecological Services, a 5% increase for Pediatric Services and a 5% increase for Adult Primary and Preventive Care Services. In order to implement these rate increases, 12 VAC 30-80-190 needs to be amended. This section of the Administrative Code defines the methodology for physician fee schedule rate setting under the Resource Based Relative Value Scale (RBRVS) system.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The 2005 Appropriation Act Items 326 VVV, WWW, and XXX directed this agency action.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

Item 326 VVV of the 2005 Appropriation Act mandated a 2.5% reimbursement increase to Obstetrical and Gynecological (OB/GYN) professional services. These same services had been increased based on the Governor’s declaration that a threat to public health existed regarding access to OB/GYN care. In response to that public health threat, the Governor directed that rates for OBGYN physician services be increased by 34% effective September 1, 2004. Since the 34% increase directed by the Governor has already been implemented, 12 VAC 30-80-190 is being amended to implement the additional 2.5% increase with an effective date of May 1, 2006.

Item 326 WWW of the 2005 Appropriation Act mandated a 5% reimbursement increase to pediatric physician services. The Item further directed the Department to consult with pediatric provider representatives to determine the procedures most appropriate for inclusion in this rate increase. DMAS has consulted with providers and determined that the Evaluation and Management (E&M) procedure codes delivered to recipients under age 21 represent the most appropriate codes for the pediatric increase. 12 VAC 30-80-190 is being amended to implement the 5% increase with an effective date of May 1, 2006.

Item 326 XXX of the 2005 Appropriation Act mandated a 5% reimbursement increase for adult preventive and primary care physician services. The Item further directed the Department to consult with primary care provider representatives to determine the procedures most appropriate for inclusion in this rate increase. DMAS has consulted with providers and determined that the E&M procedure codes delivered to recipients age 21 and over represent the most appropriate codes for the adult preventive and primary care increase. 12 VAC 30-80-190 is being amended to implement the 5% with an effective date of May 1, 2006.

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC30-80-190	n/a	Defines the RBRVS rate setting methodology for professional fees	The language is modified to increase relevant fees by amounts specified in the 2005 Appropriation Act and to modify the RBRVS methodology to perpetuate these rate increases in future calculations.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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This regulatory action is based on specific mandates expressed in the 2005 Appropriation Act, therefore, no alternatives were considered.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.